

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition
D-417 Gem Lake/A-7228
Vadnais Heights
(Hansen Petition; 19.07 acres)
Pursuant to Minnesota
Statutes 414 (A-7212)

**ORDER DENYING MOTIONS
TO DISMISS AND DENYING
JOINDER OF ADDITIONAL
PARTIES**

On March 16, 2006, the above-entitled matter came on before Administrative Law Judge Raymond R. Krause to address the parties' cross-motions to dismiss, conditioned on various prayers for relief. A telephone conference was held on March 17, 2006 to resolve scheduling issues.

On January 15, 2005, Respondent City of Gem Lake (Gem Lake), filed a Motion to Dismiss due to Petitioner's failure to submit an unredacted document requested through discovery. On January 17, 2005, Petitioner, Bryan M. Hansen, filed a motion to dismiss his Petition without prejudice and withdraw as Petitioner in this matter. On January 17, 2005, Gem Lake submitted a request that any dismissal be with prejudice, and requested an award of attorney's fees. Supplemental pleadings were filed before the motion hearing. Respondent City of Vadnais Heights did not file any pleadings with regard to these motions.

Bryan M Hansen, P.O. Box 10843, White Bear Lake, MN 55110, appeared on his own behalf.

Edward W. Gale, Leonard, O'Brien, Spencer, Gayle & Sayre, 100 South 5th Street, Suite 2500, Minneapolis, MN 55402-1234, appeared on behalf of the City of Gem Lake.

Caroline Bell-Beckman, Jensen, Bell, Converse & Erickson, 1500 Wells Fargo Place, 30 East 7th Street, St. Paul, MN 55101-4936, appeared on behalf of the City of Vadnais Heights, but did not participate in the telephone conference.

Based upon all of the filings in this matter, and for the reasons discussed in the attached Memorandum,

IT IS HEREBY ORDERED that:

- 1) The cross-motions to dismiss in this matter are DENIED.
- 2) Respondent's motion to compel production of an unredacted copy of the Option Agreement affecting the subject parcel is DENIED.
- 3) Respondent's request for attorney's fees is DENIED.
- 4) This matter will proceed on the following schedule:

April 28, 2006 – Discovery Completed.

April 28, 2006 – Exhibits and Witness Lists Exchanged.

May 5, 2006 – Stipulation of Facts Filed.

May 10-11, 2006 – Hearing (8:30 a.m. at OAH).

Dated: this 29th day of March, 2006

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

MEMORANDUM

Discovery Issue

Gem Lake's motion to dismiss was premised on Petitioner's failure to produce an unredacted copy of the Option Agreement entered between Petitioner and the co-owner of the subject parcel and a limited liability corporation. Petitioner maintained that there was no relevant information in the unredacted portion, that the request was solely for the purpose of harassment, and that an *in camera* review of the document would be appropriate. Petitioner submitted an unredacted copy of the document at the direction of the Administrative Law Judge for *in camera* review.

This matter was brought under Minn. Stat. § 414.06. The standards for detachment are identified in Minn. Stat. § 414.06, subd. 3 as:

Subd. 3. **Order.** Upon completion of the hearing, the director may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development. The director may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship. The director may decrease the area of property to be detached and may include only a part of the proposed area to be detached. If the tract abuts more than one township, it shall become a part of each township, being divided by projecting through it the boundary line between the townships. The detached area may be relieved of the primary responsibility for existing indebtedness of the municipality and be required to assume the indebtedness of the township of which it becomes a part, in such proportion as the director shall deem just and equitable having in view the amount of taxes due and delinquent and the indebtedness of each township and the municipality affected, if any, and for what purpose the same was incurred, all in relation to the benefit inuring to the detached area as a result of the indebtedness and the last net tax capacity of the taxable property in each township and municipality.

In a recent discovery controversy seeking production of a contract, the ALJ analyzed the issue as follows:

Under Minn. R. 1400.6700, subp. 2, in a motion to compel discovery, the party seeking discovery must show that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues or amount in controversy are significant enough to warrant the discovery.

Nothing in the 1984 contract provides any relevant information, or information that might lead to relevant information, beyond that already known by MCEA and ME3, as they related during the motion hearing. As stated by Xcel during the motion hearing, nothing in the 1984 contract creates any scenario under which the

spent fuel rods transported to GE's spent fuel storage facility in Morris, Illinois, would ever be returned to Xcel's Monticello plant.¹

The *in camera* review of the Option Agreement was conducted in light of the issues identified in Minn. Stat. § 414.06, subd. 3. The information redacted from the document does not impact in any way on any issue to be addressed in this detachment proceeding. Under Minn. R. 1400.6700, subp. 2, Gem Lake's request for an unredacted copy of the document must be denied, as there is no showing that the discovery is necessary. Since the document need not be produced, the motion to dismiss for failing to produce that document must be denied.

Dismissal Issues

Petitioner's motion to dismiss was conditioned on that dismissal being without prejudice. At the hearing, Petitioner confirmed that a final resolution of this matter on the merits is sought. Gem Lake responded that only a dismissal with prejudice was appropriate.² Petitioner is entitled to proceed in this matter, according the schedule set out above. There is no basis for dismissing this matter other than Petitioner's request for dismissal and that request was withdrawn during the motion hearing.

Joinder Issues

Several references were made to joining additional parties in Petitioner's motion to dismiss and at the motion hearing. There is no basis in this proceeding to compel joinder of other property owners. No other property owners have requested intervention in this matter. Joinder of any other property owner is not appropriate at this time.

Attorney's Fees

Gem Lake requested attorney's fees, both as part of its motion to dismiss with prejudice, and for appearing in the motion hearing. Gem Lake cited Minn.R.Civ.P. 41.01(b) as authorizing the ALJ to award attorney's fees. The authority of the ALJ in detachment matters is set out in Minn. Stat. § 414.12, subd. 3, which provides for the costs of the proceeding to be apportioned, either by agreement or order of the Chief Administrative Law Judge. The costs of the proceeding are the costs charged by the Office of Administrative Hearings, not attorney's fees incurred by the parties.

¹ ***ITMO of the Application of Northern States Power Company d/b/a Xcel Energy for a Certification of Need to Establish an Independent Spent Fuel Storage Installation at the Monticello Generating Plant***, OAH Docket No. 12-2500-16407-2, PUC Docket No. E-002/CN-05-123 (Fourth Prehearing Order issued January 19, 2006).

² Gem Lake Supplemental Memorandum, at 1-4 (citing Minn.R.Civ.P. 41.01(b), ***Altimus v. Hyundai Motor Co.***, 578 N.W.2d 409 (Minn.App. 1998), ***Grover v. Eli Lilly and Co.***, 33 F.3d 716 (6th Cir. 1994), ***Chodorow v. Roswick***, 160 F.R.D. 522 (E.D. Penn. 1995), and ***Millsap v. Jane Lamb Memorial Hosp.***, 111 F.R.D. 481 (S.D. Iowa 1986)).

There is no inherent authority for ALJs to award attorney's fees. Those contested cases where such fees are awarded are those in which express authority is granted to the ALJ in the governing statute.³ In the absence of such authority, attorney's fees cannot be awarded by an ALJ.⁴

Scheduling Issues

Under Minn. Stat. § 414.07, subd. 1, any matter initiated through this process must have a final order issued within one year of the first hearing, absent an agreement to extend the deadline for a fixed additional period. During the telephone conference, the parties agreed to extend the deadline for these proceedings to May 31, 2006. The schedule set out above identifies the deadlines for each stage of the process through the hearing date. These dates are set with the understanding that no further continuances or delays in this proceeding are contemplated.

R.R.K.

c.c. Docket Coordinator
Christine Scotillo

³ See *Forsberg v. Hennepin County Human Services Dept.*, A04-238 (Minn.App.2004)(holding that lack of statutory authority to award attorney's fees precluded the District Court from awarding attorney's fees in underlying matter through *de novo* review).

⁴ G. Beck, *Minnesota Administrative Procedure* § 7.2.3 (2nd ed. 1998)(referred to generally as the "American Rule" and citing *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240 (1975); *Fitzgerald v. United States Civil Serv. Comm'n.*, 407 F.Supp. 380 (D.D.C. 1975), *rev'd. on other grounds*, 554 F.2d 1186 (D.C. Cir. 1977); *Mander v. Concreteform Co.*, 206 So.2d 662 (Fla. Dist. Ct. App. 1968); *Dail v. South Dakota Real Estate Comm'n.*, 257 N.W.2d 709 (S.D. 1977); *Watkins v. Labor & Indus. Review Comm'n.*, 345 N.W.2d 482 (WI 1984).